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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 479

**NORMAN J. PFAFF AND FRANK B. WALLACE,
EXECUTORS OF THE ESTATE OF WILLIAM L.
WALLACE, DECEASED, PETITIONERS,**

vs.

COMMISSIONER OF INTERNAL REVENUE

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT**

PETITION FOR CERTIORARI FILED OCTOBER 1, 1940.

CERTIORARI GRANTED NOVEMBER 12, 1940.

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[fol. 1]

**IN UNITED STATES CIRCUIT COURT OF APPEALS,
SECOND CIRCUIT**

Docket No. 337

**NORMAN J. PFAFF and FRANK B. WALLACE, Executors of
Estate of William L. Wallace, Dec'd, Appellants,**

VS.

COMMISSIONER OF INTERNAL REVENUE, Appellee

STATEMENT UNDER RULE 13

On Aug. 30, 1937, the Commissioner of Internal Revenue assessed a deficiency income tax for the taxable year ending Dec. 31, 1935, against Norman J. Pfaff and Frank B. Wallace as Executors of Estate of William L. Wallace for \$637.02. On Nov. 29, 1937, said Executors filed their petition for a review by the Board of Tax Appeals. On Jan. 14, 1938, the Commissioner of Internal Revenue answered.

On June 20, 1939, a hearing was had before Hon. J. Russell Leech and on Sept. 30, 1939, he rendered his memorandum opinion. On the same day decision was entered.

On Dec. 28, 1939, said Executors duly filed their petition for review by this Court, together with their assignment of errors.

Hon. J. P. Wenchel appeared as counsel for appellee before the Board of Tax Appeals, and Samuel O. Clark, Jr., appears for Appellee on this appeal.

Laurence Sovik appears for appellants, and except as above there has been no change in the parties or their attorneys.

[fol. 2] **BEFORE UNITED STATES BOARD OF TAX APPEALS**

DOCKET ENTRIES

APPEARANCES:

For Petitioners: Laurence Sovik, Esq.

For Respondents: S. U. Hiken, Esq.

1937

Nov. 29—Petition received and filed. Taxpayer notified.
(Fee paid.)

DOCKET ENTRIES—Continued

1937

Nov. 29—Copy of petition served on General Counsel.

1938

Jan. 14—Answer filed by General Counsel.

Jan. 14—Request for circuit hearing in New York City filed by General Counsel.

Jan. 18—Notice issued placing proceeding on New York City Calendar. Copy of answer and motion served on taxpayer.

1939

Apr. 20—Hearing set June 19, 1939, Buffalo, New York.

June 20—Hearing had before Mr. Leech on merits. Submitted. Appearance of Laurence Sovik, Esq., filed. Petitioner's brief due 7/15/39. Respondent's brief due 8/12/39. Reply due 8/26/39.

July 8—Transcript of hearing of June 20, 1939, filed.

July 24—Motion for leave to file brief filed by taxpayer.—brief lodged. 7/25/39 granted.

Aug. 11—Brief filed by General Counsel.

Sept. 30—Memorandum opinion rendered—Mr. Leech, Division 6. Decision will be entered for the respondent.

Sept. 30—Decision entered—J. Russell Leech, Division 6.

[fol. 3] Dec. 28—Petition for review by U. S. Circuit Court of Appeals, Second Circuit, with assignment of error filed by taxpayers.

Dec. 28—Proof of service filed by taxpayer.

1940

Feb. 9—Agreed praecipe for record filed with proof of service thereon.

BEFORE UNITED STATES BOARD OF TAX APPEALS

PETITION

The above named petitioners hereby petition for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency IT: A-1, JBW:90D, dated August 30, 1937, and as a basis of their proceeding allege as follows:

1. Petitioners are the executors of the estate of William L. Wallace, deceased. Norman J. Pfaff, one of said executors, resides at 555 Harvard Street, Rochester, N. Y., and Frank B. Wallace, one of said executors, resides at 1134 West Culver Street, Phoenix, Arizona. The variance between the notice of deficiency and the title herein is due to the omission of the name of Frank B. Wallace as one of the executors of said estate.

2. The notice of deficiency, a copy of which is hereto attached and marked Exhibit "A", was mailed to petitioners on August 30, 1937.

3. The tax in controversy are income taxes for the fiscal year ended December 31, 1935, and the deficiency tax claimed is in the amount of \$637.02, all of which amount is in dispute.

4. The determination of the tax set forth in the said notice of deficiency is based upon the following error:

[fol. 4] The inclusion in income for the year 1935 of \$5,689.19 in outstanding accounts receivable of the partnerships in which taxpayer was a member prior to his death on December 25, 1935.

5. The facts upon which petitioners rely as the basis of this proceeding are as follows:

(a) At the time of his death taxpayer had an interest in an undeterminable quantity of accounts receivable of two partnerships. Taxpayer was a member of the partnership known as Wallace, Brust, Muench & Potter under an agreement dated July 1, 1934, said partnership to terminate June 30, 1935. Taxpayer was also a member of the partnership known as Wallace, Brust, Muench, Potter & Spire under an agreement dated July 1, 1935, said partnership to terminate June 30, 1936.

(b) Taxpayer died December 25, 1935.

(c) During the year 1936 and up until Oct. 1 of that year, the executors of the estate of said taxpayer received from said partnership the sum of \$5,189.19, which sum represented the difference between taxpayer's interest in the actual cash collections of said accounts receivable of \$6,193.14 and his share in the expense of collecting, amounting to \$1,003.95.

On Oct. 1, 1936, taxpayer's interest in the remaining accounts was sold by the executors of his estate under an order of Surrogate's Court of Onondaga County, and the price obtained at such sale and received by the executors was \$500.00.

(d) The amount received by the estate of said taxpayer from said accounts receivable totaled \$5,689.19, all of said moneys being received during the year 1936.

(e) The books of account of both the aforesaid partnerships are kept on a cash basis.

[fol. 5] (f) Under both partnership agreements it was understood and agreed that at the end of each month during the existence of said partnerships there should be an accounting for the preceding month and, after the deduction of expense of said partnership, there should be paid to each partner the proportionate share of profits in said partnership.

(g) Under the terms of said partnership agreements, the amounts allocated to the account of each partner were determined upon the proceeds actually received in cash from the patients' accounts receivable and each partner was merely entitled to his share of the proceeds of the patients' accounts actually collected.

(h) In accordance with said partnership agreements, there was payable to taxpayer for December, 1935, the sum of \$163.96.

Wherefore, petitioners pray that this Board may hear the proceeding and disallow the deficiency tax as claimed.

Laurence Sovik, Attorney-in-Fact, 930 University Block, Syracuse, New York.

(Verifications.)

EXHIBIT "A" TO PETITION

Aug. 30, 1937.

Norman J. Pfaff, Executor, Estate of William L. Wallace, Deceased, 810 South Crouse Avenue, Syracuse, New York.

SIR:

You are advised that the determination of the income tax [fol. 6] liability of William L. Wallace, deceased, for the

taxable year ended December 31, 1935, discloses a deficiency of \$637.02, as shown in the statement attached.

In accordance with section 272(a) of the Revenue Act of 1934, notice is hereby given of the deficiency mentioned. Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a re-determination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C1:P:7. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully, Guy T. Helvering, Commissioner, by
(Signed) Chas. T. Russell, Deputy Commissioner.

STATEMENT

IT:A:1

JBW:90D

In re: Norman J. Pfaff, executor, estate of William L. Wallace, deceased, 810 South Crouse Avenue, Syracuse, New York.

[fol. 7] Tax Liability for Taxable Year Ended December 31, 1935

	Liability	Assessed	Deficiency
Income tax	\$1,445.90	\$808.88	\$637.02

The deficiency shown herein is based upon the report dated February 23, 1937, prepared by Revenue Agent Thomas J. Collins, a copy of which was transmitted to you. The report has been approved as submitted.

Careful consideration has been given to your protests dated April 19, 1937, and July 7, 1937, in connection with the report of the internal revenue agent in charge, and the

information submitted at a conference held in the office of that official, and in this office under date of July 28, 1937.

The adjustments made and computation of tax follow:

Net income shown on the return		\$12,774.56
1. Partnership income increased	\$5,689.19	
2. Foreign dividends received ..	427.50	6,116.69
		<hr/>
		\$18,891.25

Deduct:

3. Domestic dividends decreased	\$292.00	
4. Interest paid	243.21	
5. Taxes paid	653.16	1,188.37
		<hr/>

Net income adjusted	\$17,702.88
---------------------------	-------------

Explanation of Changes

1. Net amount of accounts receivable for services rendered by law partnership (accrued at the date of death) is included in taxable income in accordance with article 42(1) of Regulations 86, which provides that all accrued income, not applicable to a prior period, at date of death must be included in decedent's taxable income. See also the decisions of the United States Board of Tax Appeals [fol. 8] in the cases of Maurice L. Goldman et al., 15 Board of Tax Appeals, page 1341, and Clarence B. Davidson, executor, 20 Board of Tax Appeals 856, affirmed by Circuit Court of Appeals (2d) Ct. 43 Fed. (2d) 1077 A. F. T. R. 1025, wherein it was held that the income of the partnership, allowable to the deceased partner to the date of his death, should be included in the income tax return filed on his behalf for the period ended with his death, no distinction to be drawn between cases where the partnership or deceased partner was on a cash or accrual basis.

2. Amount is determined as follows: \$380.00 transferred from item 10(a) on face of return plus \$47.50 from Dome Mines stock, declared prior to date of death but paid on January 15, 1936.

3. Amount is determined as follows:

Transferred to foreign dividends (other income) . . . \$380.00

Added:

Declared prior to date of death, but paid subsequent thereto, included in accordance with the provisions of article 42-1 of Regulations 86:

National Cash Register paid January 15, 1936	\$25.00	
Easy Washing Machine paid December 31, 1935	37.50	
Phillip Morris & Co. paid December 31, 1935	25.00	
North American Co. paid January 1, 193650	88.00

Net decrease \$292.00

[fol. 9] 4 and 5. Accrued interest and accrued taxes at date of death are allowed as deductions in accordance with the provisions of article 42-1 of Regulations 86.

Computation of Tax

Total net income adjusted \$17,702.88

Less:

Personal exemption 1,000.00

Income subject to surtax \$16,702.88

Less:

Dividends \$582.50

Earned income credit 10% of \$14,000.00	1,400.00	1,982.50
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Net income subject to normal tax \$14,720.38

Normal tax at 4% on \$14,720.38 588.82

Surtax on \$16,702.88 857.32

Total \$1,446.14

Less:

Tax paid at source \$.24 .24

Total amount assessable \$1,445.90

Tax previously assessed; account No. 805610 808.88

Deficiency in tax \$637.02

A copy of this letter, together with a copy of the statement, has been mailed to your representative, Mr. Laurence Sovik, in accordance with the authority contained in the power of attorney executed by you and on file with the Bureau.

[fol. 10] BEFORE UNITED STATES BOARD OF TAX APPEALS

ANSWER

Now comes the respondent by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition of the above-named taxpayers, admits and denies as follows:

1. Admits the allegations in paragraph 1.
2. Admits the allegations in paragraph 2.
3. Admits the matter contained in paragraph 3, except it is denied that the taxes in controversy are for the fiscal year.
4. Denies the errors complained of in paragraph 4.
5. (a) Admits the matter set forth in paragraph 5 (a), except it is denied that the quantity of accounts receivable of the two partnerships was undeterminable.
 - (b) Admits the matter set forth in paragraph 5 (b).
 - (c) Admits the matter set forth in paragraph 5 (c).
 - (d) Admits the matter set forth in paragraph 5 (d).
 - (e) Admits the matter set forth in paragraph 5 (e).
 - (f) Denies the matter set forth in paragraph 5 (f).
 - (g) Denies the matter set forth in paragraph 5 (g).
 - (h) Denies the matter set forth in paragraph 5 (h).
6. Denies generally and specifically each and every allegation contained in taxpayers' petition, not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that taxpayers' appeal be denied.
 J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue.

[fol. 11] BEFORE UNITED STATES BOARD OF TAX APPEALS

MEMORANDUM OPINION

LEECH:

Respondent determined a deficiency of \$637.02 in income tax of petitioners' decedent for the period January 1, 1935, to the date of his death on December 25, 1935. This deficiency arises through the inclusion of the sum of \$5,689.19 in decedent's gross income for that period, under section 42 of the Revenue Act of 1934. This sum was so treated on the ground that it represented the amount accrued to decedent at the date of his death with respect to his interest in certain accounts receivable due two partnerships of which decedent had been a member and covering services rendered by them during his lifetime.

The decedent was a practicing physician. During 1935 he was a member of two medical partnerships, one created in 1933 and dissolved by limitation of the partnership agreement on June 30, 1935, and the other created on July 1, 1935, and in existence at the date of his death on December 25 of that year. Each of these partnerships maintained its accounts on a cash basis. In each partnership the decedent was entitled to 40 per cent of the profits. The second partnership, upon organization, took over the assets and assumed the liabilities of the prior partnership.

At the time of decedent's death there were partnership accounts outstanding in a total amount of \$69,061.59 for services rendered patients during decedent's lifetime. How much of this total represented accounts receivable of the first partnership is not disclosed. Between the date of decedent's death and October 1, 1936, net payments received on these accounts aggregated \$16,251.21, of which [fol. 12] \$5,961.80 was paid decedent's estate as his net distributive share. On the last named date decedent's interest in the remaining uncollected accounts was sold by his executors for \$500. In the estate tax return filed for decedent's estate his interest in these uncollected accounts of the partnership, as of the date of his death, was included at a value of \$6,693.14.

In determining the disputed deficiency, respondent increased decedent's gross income by \$5,689.19, as the sum accruable on account of his interest in these partnership receivables at the time of his death, under section 42 of the

Revenue Act of 1934. How this amount was arrived at is not disclosed.

Petitioners contend that there was no amount accruable to their decedent at the time of his death with respect to partnership receivables because the partnerships in question maintained their accounts on a cash basis and, consequently, realized no income until the actual collection of the accounts. The argument then follows that decedent, as a member of the partnerships, accordingly cannot be held to have become entitled to any payment from the partnerships until these accounts were actually collected. It is then urged that, since there was no obligation due decedent at his death, no amount could be considered as then accrued to him.

We think this reasoning overlooks the fact that one of these partnerships had terminated on June 30, 1935, prior to decedent's death, and thus within the taxable period here in question. With respect to the accounts due this partnership at the time of its dissolution, we think there could be no question that decedent's 40 per cent interest therein was distributable thereupon to him and that the asset value of such interest was a proper item of accrual had decedent maintained his accounts on an accrual basis. The effect of [fol. 13] section 42, cited supra, was to place decedent on that basis for the period during which that interest became distributable. See *Lillian O. Fehrman, Exrx.*, 38 B. T. A. 37. The second partnership was organized on July 1, 1935. It received from the several partners their interests in the assets of the first partnership and assumed their liabilities in connection therewith. The second partnership also stood dissolved upon decedent's death. Its assets, including the accounts receivable here in dispute, were then distributable to the several partners. Any gain represented thereby was includable in income of a deceased partner, irrespective of the fact that the partnership maintained its accounts upon the cash basis. *Guaranty Trust Company of New York v. Commissioner*, 303 U. S. 493; cf. *Bull v. United States*, 295 U. S. 247.

Since the partnership was dissolved by decedent's death, we think his right then accrued to the distributive share of the partnership assets, consisting of the accounts receivable, and that the amount then reasonably determinable as collectible constituted income accrued as of date. In this connection it is noted that respondent, in his determination

of the deficiency, has not included in decedent's income, as accrued, his 40 per cent share in these accruals, at their face amount. Only approximately 20 per cent of that face value is included. The burden is upon petitioners to establish error. There is no evidence that respondent's determination as to the amount which could reasonably be anticipated as collectible as of the date of decedent's death is incorrect or excessive. In fact, the only evidence bearing upon the accuracy of such estimate tends to sustain its reasonableness. The amount included by respondent is less than the amount actually realized from decedent's interest in these receivables and is less than the amount declared [fol. 14] by petitioners as the value of these receivables in the estate tax return which they filed.

Petitioners contend that the question here involved is controlled by our decision in *Lillian O. Fehrman, Exrx.*, supra, but the facts in that case were quite different from those presented here. There the income sought to be included by the respondent was a net percentage of net profits of a business, due under the contract of employment of decedent, at the conclusion of the taxable year in which the death of the decedent occurred. These profits for the year, and the portion to which the decedent was entitled, could only be computed as of the close of that year. In that case the petitioner's decedent's death gave rise to no right in his estate to payment of any amount. Such right accrued only at the termination of the year in which petitioner's decedent died and then only as to such profits as might be realized upon the business of that entire year.

The respondent's determination is affirmed.

Enter.

Decision will be entered for the respondent.

BEFORE UNITED STATES BOARD OF TAX APPEALS

DECISION

Pursuant to the determination of the Board, as set forth in its memorandum opinion entered September 30, 1939, it is

Ordered and Decided: That there is a deficiency in income tax for the period January 1, 1935, to December 25, 1935, in the amount of \$637.02.

Enter.

(Signed) J. Russell Leech, Member.

[fol. 15] IN UNITED STATES CIRCUIT COURT OF APPEALS

PETITION FOR REVIEW OF BOARD DECISION

Taxpayers, petitioners in this cause, by Laurence Sovik, counsel, hereby file their petition for review by the Circuit Court of Appeals for the Second Circuit of a decision by the United States Board of Tax Appeals rendered on September 30, 1939, determining a deficiency in petitioners' Federal income tax for the period January 1, 1935 to December 25, 1935, and respectfully shows:

I

Petitioners are executors of the estate of Dr. William L. Wallace, who died on Dec. 25, 1935. Dr. Wallace was a member of a partnership of practicing physicians and surgeons and reported his income on a cash basis based on the calendar year. The partnership likewise kept its books and records on a cash basis.

This case involves two partnership agreements, because in the taxable year in which Dr. Wallace died the partnership agreement of July 1, 1933 (petitioners' Exhibit 1) expired on June 30, 1935. At that time a new partner was taken in and a new partnership agreement executed (petitioners' Exhibit 2), which was to continue until June 30, 1936, but was terminated by the death of Dr. Wallace on December 25, 1935.

Each of these partnership agreements provides in paragraph eighth thereof that at the end of each month there shall be an accounting for the preceding month of—"all partnership gains and losses and there shall be paid to each of said partners, after the deduction of the expenses of said partnership, the proportionate share of the profits of said co-partnership as hereinbefore specified."

[fol. 16] The evidence discloses that the partnership accounts were kept on a cash basis and no entries were made on the books until the money for the particular service had been received by the partnership. In addition to the books of the partnership the partnership maintained a card system by which the name of each patient was listed on a separate card. As services were rendered to each patient, whether the case was then completed or not, an entry was made on the card showing the work which was done at a

particular time. Although sometimes charges for particular visits were entered on the card, ordinarily no bill was sent out for the services until the case had been completed. In many cases no charge was ever made and no bill ever sent and, in other cases, upon the completion of the case the individual charges which appeared on the card, if any, might be ignored and the doctor in charge of the case would make a flat charge for the entire case, at which time a bill would be sent out.

At the date of Dr. Wallace's death it was impossible to ascertain what accounts receivable had accrued to the partnership because some of the cases were charity cases and others were unfinished. The amount of the accounts receivable of the partnership on that particular date was indeterminate and was reduced to a determinate amount only after all of the cases then under treatment had been completed and charges made against them.

The books of the partnership showed only the expenditures actually made and the cash actually received. The monthly accountings which were had pursuant to the eighth paragraph of each of the partnership agreements were only with reference to the matters appearing on the books. With reference to the matters appearing on the card system, no [fol. 17] part of the monies which would be received from such services could be said to have accrued to any particular partner because charges would have to be made, expenses of the partnership deducted and bills rendered before any monies accrued or became distributable to any individual partner.

On the death of Dr. Wallace, Dec. 25, 1935, the cases contained on the card system were estimated to have a value of \$69,601.13. After these accounts had been collected, so far as possible, the surviving partners rendered an accounting and paid over to petitioners the sum of \$5,189.19, which payments were made during the calendar year of 1936. On Oct. 2, 1936, Dr. Wallace's interest in the remaining accounts was sold at public auction, pursuant to an order of the Surrogate's Court of Onondaga County, New York, and the price obtained at such sale by petitioners was \$500.00. Thus the total received by petitioners from the partnership in the calendar year of 1936 totaled \$5,689.19. None of this amount was included in petitioners' return for the calendar year of 1935. The Commissioner assessed a deficiency tax in the sum of \$637.02 upon the ground that the sum received

in 1936 was accrued to Dr. Wallace at the time of his death in 1935.

.. II

ASSIGNMENTS OF ERROR

Petitioners assign as error the following acts and omissions of the Board of Tax Appeals:

(1) The amount received for said accounts receivable was not taxable income for the year 1935.

(2) The amount received for said accounts receivable was not income accrued to Dr. Wallace at the time of his death.

(3) Said income did not accrue until the year 1936, when it was actually received.

[fol. 18] (4) The amount collected from said accounts receivable in the year 1936 was not accounts receivable at the time of Dr. Wallace's death.

(5) There was nothing on the books of the partnership accrued to Dr. Wallace at the time of his death.

(6) At the time of his death Dr. Wallace had no right, title or interest in and to said accounts receivable, except as provided in said partnership agreements.

(7) There was no income accrued up to the date of Dr. Wallace's death within the meaning of section 42 of the Revenue Act of 1934.

(8) The Court erred in holding that said accounts receivable were distributable to the several partners at the date of Dr. Wallace's death.

(9) The Court erred in holding that the amount reasonably determinable as collectible at the time of Dr. Wallace's death constituted income accrued as of that date.

(10) The Court erred in holding that it was necessary for petitioners to establish the amount which could reasonably be anticipated as collectible as of the date of Dr. Wallace's death.

Laurence Sovik, Counsel for Petitioners, 930 University Block, Syracuse, New York.

:(Verifications.)

[fol. 19] IN UNITED STATES CIRCUIT COURT OF APPEALS

NOTICE OF FILING PETITION FOR REVIEW

Please take notice that petitioners on the 28th day of December, 1939, filed with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the Circuit Court of Appeals for the Second Circuit of the decision of the Board of Tax Appeals heretofore rendered in the above entitled cause. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you. Dated at Syracuse, N. Y., this 23rd day of December, 1939.

Respectfully, Laurence Sovik, Counsel for Petitioners, 930 University Block, Syracuse, N. Y.

Personal service of the foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein is hereby acknowledged this 28th day of December, 1939.

J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, Counsel for Respondent.

[fol. 20] BEFORE UNITED STATES BOARD OF TAX APPEALS

PRAECIPE FOR TRANSCRIPT OF RECORD

To the United States Board of Tax Appeals:

You are hereby requested to prepare, certify and transmit to the Clerk of the United States Circuit Court of Appeals for the Second Circuit, with reference to the petition for review heretofore filed by petitioners in the above entitled matter, a transcript of the record in the above cause prepared and transmitted as required by law and by the rules of said Court, and to include in said transcript of record the following documents, to wit:

1. Reporter's minutes of hearing on June 20, 1939, at Buffalo, N. Y., with Exhibits 1, 2, 3 and A4.
2. Pleadings before the Board of Tax Appeals as follows:
 - (a) Petition for redetermination.
 - (b) Answer of respondent.
3. Memorandum opinion of Board of Tax Appeals.

4. Decision of Board of Tax Appeals.
5. Petition for review filed by petitioners in the above cause, including assignments of error.
6. Notice of filing petition for review, together with admission of service thereof.
7. The docket entries of proceedings before the Board.
8. This praecipe.

Dated, February 6th, 1940.

Laurence Sovik, Counsel for Petitioners, Office and
P. O. Address, 930 University Block, Syracuse,
New York.

[fol. 21] Service of a copy of the within praecipe is hereby
admitted this 9th day of February, 1940. Agreed to

J. P. Wenchel, Attorney for Respondent on Review.

BEFORE UNITED STATES BOARD OF TAX APPEALS

Statement of Evidence

EVIDENCE ON BEHALF OF PETITIONER

Thereupon, the petitioner, to maintain the averments of
its petition, introduced the following proof:

DOROTHY PELLEENZ, called as a witness by and on behalf
of the petitioner, having been first duly sworn, was exam-
ined and testified as follows:

The Clerk: Dorothy Pellenz.

Mr. Sovik: Your Honor, these are original documents.
May I have it appear that copies may be later substituted
for the originals?

The Member: The Board will order now that photostatic
copies may be substituted for any original exhibits received
in evidence in this case.

Mr. Sovik: Thank you.

The Member: Or ordinary copies, subject to check by the
opposing party.

Direct examination.

By Mr. Sovik:

Q. Miss Pellenz, you are a resident of Syracuse, New
York?

A. Yes.

[fol. 22] Q. And in his lifetime you were acquainted with Dr. Wallace?

A. I was.

Q. Who has been mentioned here?

A. Yes.

Q. I show you Exhibit 1 marked for identification and ask you whether or not that is your signature?

A. Yes.

Q. And at that time you were a Notary Public of the County of Onondaga?

A. Yes.

Mr. Sovik: Offer Exhibit 1 in evidence as being a partnership agreement existing between the decedent and the other parties mentioned in Exhibit Number 1. Under our rules of evidence, it would be admissible without proof in view of the fact that it was acknowledged, but I am not sure whether that is the rule in this court or not.

Mr. Hiken: May I just ask a question about that? Was this document signed by the persons whose signatures appear thereon at the time you took the acknowledgement?

The Witness: Yes.

Mr. Hiken: And you saw them sign it?

The Witness: Yes.

Mr. Hiken: And this is the original document that was signed in your presence?

The Witness: Yes.

Mr. Hiken: No objection.

The Member: Received in evidence as petitioner's Exhibit Number 1.

The said document (agreement so offered and received in evidence) was marked petitioner's Exhibit 1, and made a part of this record.

By Mr. Sovik:

Q. I show you petitioner's Exhibit 2 marked for identification, Miss Pellenz, and ask you whether or not that is your signature?

A. Yes.

[fol. 23] Q. Appearing on the last page?

A. Yes.

Q. And at that time were you a Notary Public for the County of Onondaga?

A. Yes.

Q. Do you know the signatures on the next to the last page of this exhibit, William L. Wallace, Herbert O. Brust, Carl Muench, Carlton F. Potter, A. J. Spire?

A. Yes.

Q. Did you see those men sign this exhibit?

A. Yes.

Mr. Sovik: I offer it in evidence as partnership agreement existing between the men just mentioned.

Mr. Hiken: You saw these gentlemen sign this document on the date appearing in the acknowledgment?

The Witness: Yes.

Mr. Hiken: And they signed in your presence at that time, is that correct?

The Witness: That is correct.

Mr. Hiken: No objection.

The Member: Received as petitioner's Exhibit Number 2.

The said document (partnership agreement) so offered and received in evidence was marked petitioner's Exhibit 2, and made a part of this record.

By Mr. Sovik:

Q. Now, Miss Pellenz, you were employed by the gentlemen that are mentioned in Exhibits 1 and 2?

A. Yes.

Q. And you also were employed by Dr. Wallace for a number of years?

A. Yes.

Q. How many years?

A. Twenty-two.

Q. Among your other duties you were the bookkeeper?

A. Yes.

Q. Were you, beginning July 1, 1935, the bookkeeper for the partners mentioned in Exhibit Number 2?

A. Yes.

[fol. 24] Q. And were you the bookkeeper for the partners named in Exhibit Number 1 between July 1, 1933, and July 1, 1935?

A. Yes.

Q. And you were the bookkeeper for the partners mentioned in Exhibit 2 up until the time that Dr. Wallace died on December 25, 1935?

A. Yes.

Q. And you also were the bookkeeper for the estate of Dr. Wallace?

A. Yes.

Q. And were you also the bookkeeper for the remaining partners under Exhibit 2 after Dr. Wallace died and until the affairs of that partnership were wound up?

Mr. Hiken: May it please Your Honor—

A. Yes, I was.

Mr. Hiken: —all of these questions have been leading. They have been stating the answer in the form of the question. I suggest that counsel be instructed to refrain from leading the witness. I haven't objected heretofore because it has not been too important.

Mr. Sovik: Your Honor, may I say this—

The Member: They have been up to this point. Proceed.

Mr. Sovik: I was asking in that form only for the purpose of simplifying the situation.

The Member: Proceed.

By Mr. Sovik:—

Q. Now, Miss Pellenz, will you tell us briefly what books you kept for these partners under Exhibit Number 2?

A. Well, I have, of course, a book of account of all their receipts and expenses and the distribution to the various partners.

Q. Was there anyone else that kept any books or records—?

A. No.

Q. —for these partners?

A. No.

[fol. 25] Q. Were all of the receipts from July 1, 1935, to the time of Dr. Wallace's death handled by you as the bookkeeper for these partners?

A. Yes.

Q. And were all of the receipts beginning July 1, 1933, to July 1, 1935, handled by you as the bookkeeper for the partners mentioned in Exhibit Number 1?

A. Yes.

Q. Now then, what did you do with the receipts that you handled you have testified?

A. Well, they were all deposited in the bank and I paid the expenses and made an accounting to the partners at the

end of each month. I gave them a check for whatever—well, I usually decided what distribution would be made, depending on the balances on hand.

Q. And the money was deposited in what bank?

A. Oh, that last partnership, with the Syracuse Trust Company, and the other one, I think, was in the Merchants National Bank. There are two banks.

Q. Was all of the money disbursed by you by check or was some disbursed in cash?

A. By check only.

Q. By check only. Did you draw these checks?

A. Yes.

Q. And the checks were signed by—who signed the checks?

A. The checks might be signed by any one of the partners, although I also had power of attorney, whichever one happened to be convenient, usually Dr. Wallace when he was alive, because he happened to be the most convenient person.

Q. Were there any entries kept on any of these books by you which at any time allotted to any person, any one of these men—

Mr. Hiken: I object. The books speak for themselves and constitute the best evidence.

The Member: I think the books would speak for themselves. This witness who kept the books and made, as she said, all the entries in those books—am I correct?

[fol. 26] The Witness: That is correct.

The Member: If she has any personal recollection on this aside from any written record, then she can state what that personal recollection is. Do you have a personal recollection aside from what the books show as to whether or not any such entry was made on the books?

The Witness: Yes, I remember very well.

The Member: Well, what is the answer.

The Witness: No, there never were any such.

The Member: Objection overruled. Exception noted for the respondent.

By Mr. Sovik:

Q. Now, you also kept track of the accounts receivable among your duties as bookkeeper?

A. Yes.

Q. And you sent out bills to the various patients and accounts?

A. Yes.

Q. And you handled collections of those accounts yourself?

A. Yes.

The Member: Don't you think the question would be better put if it were "do you"?

Mr. Sovik: Yes. Thank you.

By Mr. Sovik:

Q. Now, Miss Pellenz, do you know the amount of cash on hand or on deposit of the partnership mentioned in Exhibit Number 2 as of the time of Dr. Wallace's death, that is December 25, 1935?

Mr. Hiken: I object, if it please Your Honor. There is no issue in the case of the cash on hand at the time of the decedent's death.

Mr. Sovik: Well, if counsel will concede that amount, that is satisfactory indeed.

The Member: Then the question is withdrawn?

[fol. 27] Mr. Sovik: I will withdraw the question if counsel will concede for the record there was approximately \$150 odd of cash on hand on the date of this decedent's death, December 25, 1935, in the partnership funds.

Mr. Hiken: I am not conceding any amount. I couldn't do that, Your Honor. My point is that it is immaterial what cash was on hand.

The Member: We do not see its relevancy either, but for the purpose of the record the objection is overruled, and an exception is granted to the respondent.

Mr. Sovik: You may answer.

A. The cash was \$138.58.

Mr. Sovik: Would you like to see that, counsel, in the books?

Mr. Hiken: No. That is all right. I just wanted to see what she was reading from.

The Member: The witness is testifying from a book which she herself kept.

The Witness: That is right.

Mr. Sovik: She has testified as to that question.

The Member: Very well.

By Mr. Sovik:

Q. Now, Miss Pellenz, in the course of your duties as a bookkeeper, you became familiar with these accounts which appear on the books?

A. Yes, sir.

Q. And will you state whether or not as of December 25, 1935, all of those accounts were for services rendered up to the time of the death of Dr. Wallace?

A. Yes.

Q. And were some of those accounts for services which had not been completely finished?

A. Yes, a good many would have been.

[fol. 28] Q. Now, have you any information or any books or records from which you could distinguish which of these accounts which were on the books as of December 25, 1935, were for services which were completed or services which were incompleated?

Mr. Hiken: I object, if it please Your Honor. I cannot see where it is material whether or not services for which bills had been sent out had been completed or not. The mere fact that the bills were outstanding would indicate that they were owing to the partnership firm that had rendered them.

Mr. Sovik: I perhaps should ask one more preliminary question and qualify that. Now, Miss Pellenz—

Mr. Hiken: Just a minute. I request that the objection be ruled upon in the present form of the record.

The Member: Well, the Board refuses to pass on it until the question is asked. You will get your ruling.

Mr. Sovik: Thank you, Your Honor.

By Mr. Sovik:

Q. Were all of the accounts on the books of the partnership on December 25, 1935, accounts for which statements had previously been rendered?

A. No.

Q. In other words, there were a number of accounts on the books which we will say any one of these partners, or certain of these partners, where they had not completed the services which they were performing for these particular patients, is that right?

A. That is right.

Q. And there came a time when those services were completed?

A. Yes.

Q. And when those services were completed the account was made up by the respective partner who had charge of that particular patient?

A. That is right.

[fol. 29]. The Member: Now just a minute, to get back to the question to which the objection was made. Will you please read that question? As we recall the objection was on the basis of relevancy. Objection is overruled and exception is noted for the respondent.

By Mr. Sovik:

Q. Now, Miss Pellenz, you have testified that you were familiar with these accounts. Was there any way as of December 25, 1935, that you could have, as the bookkeeper for these partners, for distinguishing between unfinished business and finished business?

A. No.

Q. Now there did come a time, Miss Pellenz, when all of the services for these accounts which were on the books on December 25, 1935, were completed?

A. Yes.

Q. A figure was placed on each account?

A. Yes.

Q: Do you know what that figure ultimately was?

Mr. Hiken: May it please Your Honor, I object on the ground of relevancy.

The Member: The objection overruled. Exception is noted for the Respondent.

A. That figure totaled \$69,601.59.

Q. Now, between the time that Dr. Wallace died and October 2, 1936, certain sums were collected on these accounts?

A. Yes.

Q. Now, do you know what that amount was, Miss Pellenz?

A. Yes.

Mr. Hiken: I object, if it please, Your Honor.

Q. Will you so state?

Mr. Hiken: I withdraw the objection on that question. Did you ask her to state?

Mr. Sovik: Yes.

[fol. 30] Mr. Hiken: I object, if Your Honor please. It is immaterial what collections were subsequently made on accounts accrued as of a particular date.

The Member: We understand your position. The objection is overruled and exception is noted for the respondent.

A. The amount was \$16,251.21.

By Mr. Sovik:

Q. Now that sum was the amount which was collected in winding up the affairs of these partners under Exhibit Number 2?

A. It is under both.

Q. Under both Exhibits Number 1 and 2?

A. Yes, sir, a total.

Q. All right. And there came a time when the share to which Dr. Wallace, if he had been living, would have been entitled to, that was paid over to the executors of Dr. Wallace's estate?

A. Yes.

Q. Now can you tell me when that was?

A. Well—

Q. Was it from time to time?

A. That was paid monthly.

Q. Monthly?

A. From the time he died up to the final settlement.

Q. Were there any payments made in 1935?

A. Yes. In 1935 there was \$163.93 payable.

Q. How much was paid in 1936?

A. In 1936 there was \$5,961.80.

Q. Were there any other sums paid?

A. Yes, the money from the sale of the accounts.

Q. Now there came a time when Dr. Wallace's interest in the accounts under Exhibits Number 1 and 2 were sold?

A. Yes.

Q. They were sold at public auction?

A. Yes.

Q. When was that, if you know?

A. October 1, 1936.

Q. How much were they sold for?

A. Five hundred dollars.

[fol. 31] Q. Now, other than sums to which you have testified, did the executors of the Wallace estate receive any-

thing other than that for his interest in these accounts or in these partnership agreements, Exhibits Number 1 and 2?

A. No.

Mr. Sovik: I think that is all, Your Honor.

The Member: Cross-examine.

Cross-examination.

By Mr. Hiken:

Q. Didn't the estate of Dr. Wallace receive some distribution some time from the sale of some uncollected accounts?

A. Yes. Received a lump sum.

Q. Was that included in the sum of \$5,961.80 that was received by the estate in 1936?

A. Well, that was received from the partnership before the accounts were sold, his share of the accounts was sold and there was a \$500 lump sum final settlement to the estate.

The Member: Who sold those accounts?

The Witness: They were sold by the attorney for the estate, or through his office.

Mr. Sovik: That is, Dr. Wallace's interest was sold?

The Witness: Yes, Dr. Wallace's share was sold.

Mr. Sovik: I didn't want Your Honor to be confused. In other words, Your Honor, I want it to appear correctly on the record. All of these accounts were not sold, Miss Pelenz?

The Witness: No.

Mr. Sovik: Just Dr. Wallace's interest in those accounts in cleaning up the partnership affairs?

The Witness: Yes.

By Mr. Hiken:

Q. May I see the books from which you were reading a moment ago?

A. You can turn the book over to the year. There is 1935, for instance. Those are the monthly statements.

[fol. 32] Q. Do these books constitute all the books kept by you for the two partnerships described in Exhibits 1 and 2?

A. Yes.

Q. And these are the originals of the books kept?

A. They are.

Q. Will you show me where the accounts receivable that were owing to each of these partnerships appear in these books on December 25, 1935?

A. They don't appear on the books. The accounts receivable.

Q. You mean the firm kept and you, as bookkeeper of the firm, kept no accounts receivable?

A. We had a card for every account, but we had no record on our books. They were entered on a cash basis.

Q. This book that you have here is only a cash basis, is that correct?

A. That is right.

Q. And it contains no information concerning the accounts receivable which all of the partnerships had on December 25, 1935, is that correct?

A. That is right.

Q. But you have card records which do show that?

A. Yes.

Q. Do you have those card records with you?

A. No, I haven't.

Q. What was the system of billing that you used in connection with your activities as bookkeeper for these two partnerships in 1935?

A. We had a card for each patient with the service listed on there with the charges which the Doctor gave us. When he had completed his charges, he gave us the statement and we sent the statements, and whenever they paid they were entered on the books, when they were paid.

Q. They were only entered on the books when they were paid?

A. Yes.

Q. But they were entered on the cards for each patient as bills were sent out?

A. Yes.

Q. And you say—

[fol. 33] The Member: Just a minute. We understand a little, we think, about what the witness is talking about, and we want it in the record. We think it is this, and if we are not right we want to be corrected, that there was maintained in that office a card for each patient of each doctor and member of that partnership, is that so?

The Witness: That is right.

The Member: And as services, as a call was made or an examination was made of a patient, no matter whether it was a completed case or not, the entry on that card was made showing the work which was done at that particular time for that particular patient, and a charge made on that card, is that right?

The Witness: The charge might not have been made until maybe some time later after it was completed, but the services were supposed to be entered after they were made.

The Member: But no bill was sent out for those services, that is, there was no charge made for them until the work for which that charge was made was completed, is that so?

The Witness: That is right.

The Member: That is to say, we think that that is the picture here, in most doctor's offices, and in some other offices, that a card system is maintained and that each patient has a card and on that card is put a reference or an item indicating what was done on that particular day, and a charge was entered there. We know of many, many doctors that do not send bills out more than once a year, and we don't know whether this was that picture, but this witness has certainly described to the Board Member sufficiently clearly for us to understand what their method of bookkeeping was.

The Witness: Frequently no charge was made at all. There might never be a charge made. It might be carried over.

[fol. 34] The Member: That is, you would not waste a two cent stamp on some of the patients, would you?

The Witness: That is right.

The Member: We think we understand the picture.

By Mr. Hiken:

Q. Let me ask you this, Miss Pellenz, when a particular card entry was made for a call made by one of the doctors, the nature of the services that he performed at that time were entered on the patient's card?

A. It was really his case record that I am referring to. He put down what the nature of his services were; then after the case was completed he would undoubtedly make a flat charge or something like that and we would send it out. The card contained both the account and the nature of the services.

Q. Well, on occasion, was an entry made at the time the service was performed for the particular charge that was made in connection with that same service, even though the case may not have been completed?

A. Sometimes.

Q. Do you have any information at this time as to the amount of bills rendered as of December 25, 1935, for both of these firms?

A. You mean they were mailed out?

Q. Actually outstanding. You have no information of any kind?

A. No, sir.

Q. Do you have any information of any kind showing the services rendered by either of these partnerships up to December, 1935, which remained unpaid at that date, whether or not they had been billed?

A. I have nothing as of December 25.

Q. You didn't bring those cards with you?

A. Well, there would be thousands of them, of course. It would be quite a—

Q. You stated a figure, \$69,601.13, in your direct testimony?

A. Yes:

[fol. 35] Q. Exactly what does that figure represent?

A. Well, that figure represents an inventory of the accounts that were outstanding as of October 1, 1936. I do know that.

Q. As of October 31, 1936?

A. Yes, there are many that have been collected in the interval, so I worked backward to get the figure that was due approximately at the time of Dr. Wallace's death, the balance, the unpaid balance, the amount that had been paid.

The Member: Has the Government taxed this petitioner on his proportionate share of the accounts receivable by the partnership as of the date of the decedent's death?

Mr. Hiken: That is correct, Your Honor.

The Member: Accounts receivable?

Mr. Hiken: That is correct.

The Member: Without regard to their collectibility?

Mr. Hiken: No question was raised in that determination in connection with the collectibility of those accounts.

By Mr. Hiken:

Q. Now, as I understand it then, this figure of \$69,601.13 represents the accounts receivable as estimated by you as of the date of Dr. Wallace's death, is that correct?

A. That is correct.

Q. And then Dr. Wallace's share, assuming that that entire amount had been collected, was endorsed by the partnership agreements referred to as Exhibits 1 and 2, is that correct?

A. Yes.

Mr. Hiken: No further questions.

The Member: Just a minute. When you say that Dr. Wallace's share of those accounts receivable—

The Witness: On October 1, 1936.

The Member: He died December 25, 1935?

[fol. 36] The Witness: That is right.

The Member: And when sold, they were sold at public auction?

The Witness: Yes.

The Member: And his interest was sold for \$500, is that right?

The Witness: Yes.

The Member: That is all for the time being.

Mr. Hiken: Well, may I just repeat something for the purposes of the record.

By Mr. Hiken:

Q. The estate received five hundred dollars from the sale of some accounts receivable that were owing to the firm, is that correct?

Mr. Sovik: Your Honor, may I object to that question as highly improper in form and it might mislead the witness. In other words, it was not the accounts receivable that was sold but rather Dr. Wallace's interest in the partnership that was sold. I made that clear.

The Member: We just direct counsel to make his questions sufficiently clear to the witness, and the witness can answer it if she understands it, and if she doesn't understand it, she may say so.

Mr. Sovik: I think you and I both have the same idea in mind.

By Mr. Hiken:

Q. Miss Pellenz, in 1935 the partnership paid to the estate of Dr. Wallace an amount of \$163.96, is that correct?

A. Yes.

Q. And then in 1936 these two partnerships paid to the estate of Dr. Wallace the amount of \$5,961.80, is that correct?

A. That is correct.

[fol. 37] Q. And then also in 1936 the partnership, firms, paid to the estate of Dr. Wallace an additional \$500, is that correct?

A. The partnership paid to Dr. Wallace?

Q. Who paid to Dr. Wallace?

A. That was from the sale of his share of the accounts. The partnership did not pay it to him.

Q. Some accounts receivable were sold in 1936, is that correct?

A. Yes.

Mr. Sovik: May I object to that question. This is a lay witness that does not understand the difference between the sale of a partnership interest and the sale of partnership accounts.

Mr. Hiken: Well, apparently—

Mr. Sovik: I will have to object to it, Your Honor, as improper in form and no foundation laid and not the best evidence. If you are going into that question. I have no objection to it appearing on the record what happened, and I believe it is admitted.

The Member: Just a minute. This is cross-examination, and the witness was asked a question on redirect examination about this sale. Now we want the witness to have all the opportunity in the world, and the witness is apparently an intelligent witness, to answer the question, but this is proper cross-examination. We overrule the objection and note an exception to the petitioner. You be very careful that you understand the questions as put and if you don't understand them, you can say so. If you do understand the questions, you may answer them.

The Witness: All right.

By Mr. Hiken:

Q. Miss Pellenz, that amount of \$163.96, which was paid to the estate of Dr. Wallace in 1935, how was that amount [fol. 38] determined and from where was it received?

A. It was paid by the partnership, Dr. Wallace's distributive share of money he had taken in during 1935.

Q. How was that money taken in, was that money taken in from accounts on the card records of the partnerships that existed as of the date of Dr. Wallace's death? . .

A. Yes.

Q. And the amount of \$5,961.80 that was paid to the estate of Dr. Wallace, what did that payment represent and from what source did that money come?

A. That was paid to his estate from the partnership accounts and represented his distributive share of money which they—cash which they had taken in from accounts that were due at the time of his death.

Q. That, just like the previous items, represents the distributive share of Dr. Wallace's on moneys due the two partnerships at the date of Dr. Wallace's death, is that correct?

A. Yes; money received after his death, of course.

Q. Money he received after his death but due at the time of his death?

A. Yes.

Q. Now, in addition to those two items, \$500 was paid to the estate of Dr. Wallace as the result of the sale of Dr. Wallace's share in uncollectible accounts receivable which existed as of the date of his death when that share of his interest in those uncollected accounts receivable were sold at auction, is that correct?

A. Yes.

Q. You say that is correct?

A. Yes.

Mr. Sovik: Your Honor, I will object to it as improper in form, misleading the witness.

The Member: Objection overruled. Exception to the petitioner.

Mr. Hiken: That is all.

[fol. 39] Redirect examination.

By Mr. Sovik:

Q. You have been collecting accounts for Dr. Wallace and other doctors for a number of years?

A. Yes.

Q. And you have had considerable experience with accounts of doctors?

• A. Yes.

Q. Now, how many years have you been collecting accounts receivable of doctors?

A. Twenty-two years.

Q. Now, in that period of time, what is your experience as to the collectibility of accounts, having in mind the time when the services had been performed and the time that the account is collected?

Mr. Hiken: I object.

Mr. Sovik: Qualifying.

The Member: You are testifying now as to the particular locality in which you were employed at that period and with particular reference to the clientele of this partnership, is that right?

A. Yes.

The Member: Objection overruled. Exception is granted to the respondent.

A. Do I understand you are asking the question according to the age of these accounts, how much they are worth?

By Mr. Sovik:

Q. That is right.

A. Well, the average account that is over six months old is purely a gamble, and up to that I should say—do you want that on a percentage basis?

Q. Well, what is your experience? We will say that the service has been performed and a bill is sent out. Now then, what is your experience as to the value of that account if the account is not paid within a specified period of time, and you tell us what that time is?

A. Well, within three months you might have a forty per cent chance of collecting the account if you have made a reasonable charge.

[fol. 40] Q. What is your experience after six months?

A. Well, after six months, I reduce it to about twenty per cent.

Q. What is your experience after eight months?

A. It would be reduced in proportion.

Q. Now, when counsel was examining you with reference to the accounts receivable, which were sold on October 2, 1936, will you state whether or not it was your information that this sale sold only the interest which Dr. Wallace had in those accounts?

Mr. Hiken: I object.

Mr. Sovik: Under Exhibits 1 and 2.

Mr. Hiken: I object, if it please Your Honor. Calling for a conclusion of the witness as to what was sold was Dr. Wallace's interest in the partnership. The witness has already testified that accounts receivable were sold.

The Member: Read the question.

(Whereupon the reporter read the question as recorded.)

The Member: Well, if it was only information that she had, she couldn't testify. It would be hearsay.

Mr. Sovik: I will ask her if she knows.

By Mr. Sovik:

Q. Do you know what interest was sold, Miss Pellenz, on October 1st or 2nd, whichever the case was, with reference to these accounts to which you have been testifying?

A. Well, I thought it was Dr. Wallace's share of the accounts.

Q. All right.

A. Only.

Mr. Sovik: Your Honor, I have here with me the actual bill of sale and I don't want to encumber the record unnecessarily. However, if it is of importance, Your Honor considers it of any importance—

The Member: We are not deciding what is or is not important. You will have to try your case.

[fol. 41] Mr. Hiken: Are you through with direct?

Mr. Sovik: No. I will just mark this exhibit.

By Mr. Sovik:

Q. Now, Miss Pellenz, after Dr. Wallace's death, is it a fact that certain of these accounts were turned over to various collection agencies for collection?

A. Yes.

Q. And in your experience as collector of accounts, is it your opinion that a diligent effort was made to collect these accounts prior to this sale on October 2, 1936?

Mr. Hiken: I object.

A. Yes.

Mr. Hiken: It if please Your Honor, ask it be stricken, what the opinion of this witness is as to what efforts were made to collect the money.

By Mr. Sovik:

Q. Tell us what was done, Miss Pellenz?

The Member: Objection is sustained.

Mr. Sovik: I will withdraw that question.

By Mr. Sovik:

Q. Tell us what was done in connection with that?

A. In connection with the collecting the accounts?

Q. What effort was made by you and others within your knowledge?

The Member: Anything that you know about yourself.

A. Well, we made a very exhaustive survey of the accounts and brought our charges up to date and got bills out and tried our very best to clean up just as many of them as we possibly could.

By Mr. Sovik:

Q. To refresh your recollection, were some of those turned over to various collection agencies?

A. Yes. In the process of trying to collect them we turned over an account.

[fol. 42] Q. To the Syracuse Collection Agency, Boyd Service Collection Agency—

A. Yes.

Q. —and the Empire Collection Service?

A. Yes.

Q. What is known as the Physicians' Discount Service?

A. That is right.

Q. I show you Exhibit 3 marked for identification and ask you to state whether or not that is the paper writing purporting to be the assignment or the bill of sale of these accounts receivable which you have testified were sold on October 2, 1936?

A. Yes, this is.

Mr. Sovik: I offer it in evidence.

The Member: Received in evidence. Is there any objection?

Mr. Hiken: I don't know, Your Honor, I haven't seen it. May I have a moment to look at it?

The Member: The witness identified it.

Mr. Hiken: Well, I don't know if her identification of this is at all proper. I don't know by whom it was drawn or signed.

Counsel examines document.

Mr. Hiken: No objection, Your Honor.

The Member: Received as petitioner Exhibit 3.

The said document (assignment) so offered and received in evidence, was marked petitioner's Exhibit 3, and made a part of this record.

Mr. Sovik: That is all, Your Honor.

Recross-examination.

By Mr. Hiken:

Q. Miss Pellenz, on the basis of the cash distributions made to the estate of Dr. Wallace in 1935 and in 1936, disregarding the distribution made on account of this sale, what is the portion of the accounts receivable owing to these firms in the amount of \$69,601.13, as of the date of Dr. Wallace's death, which was actually collected?

[fol. 43] Mr. Sovik: Your Honor, I want to object to that as being improper in form and not the best evidence. The partnership agreements are in evidence and they tell what the distributive share should be.

The Member: Objection overruled. Exception is noted for the petitioner.

A. If I understand your question, you want to know the percentage. Will you repeat that again?

The Member: Let the reporter read the question.

(Whereupon the reporter read the question as recorded.)

A. And do you mean what proportion is that amount which was paid to Dr. Wallace without that five hundred dollars of \$61,000, what proportion of that amount was paid?

By Mr. Hiken:

Q. How much of that amount owing to these firms of these accounts receivable?

A. By these "firms" you mean the two partnerships?

Q. The two partnerships.

A. Oh, the two partnerships.

Q. The accounts receivable owing to the two partnerships as of the date of Dr. Wallace's death, how much was actually collected before—

A. Before the sale?

Q. —before the sale of certain uncollected accounts?

A. Yes. Well, I read off that figure, that was the figure of \$16,251.21 was collected in cash.

Q. That was the amount actually collected in cash?

A. Yes.

The Member: That \$16,000 odd was collected, and that was collected on account of the accounts receivable in the sum of \$69,000 odd that existed as of Dr. Wallace's death, is that what you mean?

The Witness: That is correct, that is what I am trying to say.

[fol. 44] Mr. Hiken: Will Your Honor excuse me while I make a little computation here. May I see petitioner's Exhibit 3, please?

The Member: The Board will recess for a few minutes.

(Thereupon a recess was taken for a few minutes, at the end of which the following occurred:)

Mr. Hiken: I have no further questions.

Mr. Sovik: I have nothing further.

The Member: Anything on the part of the respondent? Is that your entire case?

Mr. Sovik: Yes.

Mr. Hiken: We want to stipulate something from the estate tax return filed by the estate into the record.

STIPULATION

Mr. Sovik: We will stipulate, Your Honor, that the executors, petitioners in this proceeding, filed an estate tax and returned their interest in the partnerships which are set forth in Exhibits 1 and 2 in this case, of \$6,693.14 as part of the gross estate of the decedent at the time of his death, and that that return was verified December 8, 1936, and filed with the department on December 21, 1936. I probably should have covered that in my opening statement, Your Honor. Further, that in this return the foregoing item of \$6,693.14 is explained as follows: I will stipulate that

item number 1 in schedule F, which is made a part of that return, be made a part of the record in this proceeding.

Mr. Hiken: That may be marked as a joint exhibit.

The Member: A4.

The said document so offered and received in evidence was marked petitioner's and respondent's Exhibit A4, and made a part of this record.

[fol. 45] Mr. Hiken: And may I have leave to withdraw it and substitute a photostatic copy thereof?

The Member: That order has already been made.

Mr. Hiken: It is understood, as part of the record, that joint Exhibit A4 is an explanation of an item which, it has already been stipulated, was included as an asset in the gross estate of the decedent, Dr. Wallace, in the estate tax return filed by his estate.

The Member: Anything further on the part of respondent?

Mr. Hiken: I would like to point out for the purpose of the record, with Your Honor's permission, that the amount of the decedent's distributable share in the accounts receivable, at the time of his death, is stated in the deficiency notice to be \$5,689.19.

The Member: We follow that. We were going to ask you how you reached that figure?

Mr. Hiken: I don't know exactly how that figure was reached, Your Honor. However, it is considerably less than the amount set forth in the estate tax return as representing the decedent's interest in these accounts receivable at the date of his death and is also less than the amount that Miss Pellenz testified to as having actually been paid in cash out of the accounts receivable which were collected. Those amounts, exclusive of the five hundred dollars from the sale of certain accounts, total \$6,125.76. Because the lesser amount is stated in the deficiency notice, however, the respondent does not request any increase in that amount, and if Your Honor finds that the situation is within section 42 and that those amounts are properly accrueable to petitioner and should have been included in his income on the income tax return filed for the decedent for the year of [fol. 46] his death, the partnership income to be included is limited to the small amount set forth in the deficiency notice.

I would like also to point out to Your Honor, which is just an explanation of an amount which is stated, that in

the deficiency notice, items of interest and taxes accrued at the date of the decedent's death were allowed as deductions. Those deductions have not been claimed in the return. Those deductions are set forth as items 4 and 5 at the bottom of page 1 of the statement attached to the deficiency notice and explain the discrepancy in the amounts testified to here today and the amounts set forth in the deficiency notice.

EXHIBIT "1"

Articles of Agreement made and entered into this 1st day of July, 1933, by and between William L. Wallace, Herbert O. Brust, Carl E. Muench and Carlton F. Potter, severally of the City of Syracuse, Onondaga County, New York, Witnesseth:

First: In consideration of the mutual promises and agreements herein contained the said parties above named have agreed to become co-partners in the practice of medicine under the firm name and style of "Wallace, Brust, Muench & Potter," and by these presents do become co-partners in the practice of medicine in the City of Syracuse and elsewhere, under the firm name and style of "Wallace, Brust, Muench & Potter."

Second: That said co-partnership shall commence on July 1st, 1933, and end on June 30, 1935.

Third: To the end and purpose of this agreement each party agrees to give his whole time and attention to the affairs of said co-partnership, and to perform in the discharge of his duties such work as may be properly assigned to him.

[fol. 47] Fourth: At all times during the continuance of this co-partnership each of the parties hereto agree to give their attention and to their and each of their best endeavors to put the utmost of their skill and power exerting themselves for their joint interest, profit, benefit and advantage. Each party hereto agrees that he shall and will at all times during said co-partnership bear, pay and discharge between them all costs and expenses that may be required for the support and management of said co-partnership business and that all gains, profits and increases that shall come,

grow and arise by means of their said business and profession shall be divided between them, and all losses that shall in any manner happen to said business shall be borne and paid by them in the following proportion, i. e., the shares of each of said partners shall be in the following proportion during each of the two years of said agreement:

William L. Wallace, twenty-six seventy-seconds ($26/72$) part of all profits and losses incident to said co-partnership; Herbert O. Brust, fifteen seventy-seconds ($15/72$) part of all profits and losses incident to said co-partnership; Carl E. Muench, eleven seventy-seconds ($11/72$) part of all profits and losses incident to said co-partnership; and Carl F. Potter, twenty seventy-second ($20/72$) part of all profits and losses incident to said co-partnership.

Fifth: It is understood and agreed that any and all moneys hereafter received on account of the previous agreements of co-partnership between the parties hereto shall be divided on the ratio stated herein, and all debts, liabilities and charges of every kind accruing previous to July, 1933, on account of the aforesaid co-partnership agreements shall be paid by the parties hereto in the same ratio.

Sixth: It is agreed that there shall be had and kept at all times during the continuance of this co-partnership, perfect, [fol. 48] just and true books of account wherein each of said co-partners shall enter and set down all money by them or either of them, received, paid out and expended in and about said business, and also all goods, wares and commodities and merchandise by them or either of them bought or sold on account of said co-partnership business whatsoever. Said books shall be used in common between the said co-partners and each may have access thereto without interruption or hindrance of the other.

Seventh: All moneys received during the term of this co-partnership agreement shall be deposited in the Merchants National Bank and Trust Company under the firm name of "Wallace, Brust, Muench & Potter", and each party of said firm shall be allowed to draw checks upon said funds.

Eighth: That on the first day of each month hereafter until and including July 1, 1935, there shall be an accounting at the end of each month of all of the partnership gains and losses, and there shall be paid to each of said partners,

after the deduction of the expenses of said co-partnership, the proportionate share of the profits of said co-partnership as hereinbefore specified. The losses sustained by said co-partnership during said term shall be borne by each of said co-partners in the same proportion as hereinbefore provided.

Ninth: It is understood and agreed that nothing herein contained shall in any way prevent any or either of the parties hereto from carrying health and accident insurance for their own individual benefit but at their own cost and expense.

Tenth: It is also agreed that each man at his own cost will maintain his own separate automobile or automobiles as he may see fit or his work requires, and pay the expenses incident to the maintenance of the same, except such partner hereto may charge said co-partnership with the expense for all necessary out of town business trips taken in the interest of said co-partnership, at the rate of six cents per mile for all business trips taken by automobile. Each man shall maintain in his own home or residence at his own expense, a telephone.

Eleventh: It is agreed that the members of said co-partnership shall not make or endorse any note, or procure money upon the written promise of said co-partnership, or discount any notes or other obligations of said co-partnership, but nothing herein is intended to limit or abridge the right of each member of said co-partnership to sign checks for the withdrawal of money and to endorse for deposit checks, notes or other evidences of debt in the conduct of said partnership.

Twelfth: Any one of the parties to this contract may terminate this co-partnership agreement upon sixty (60) days' written notice of his intention so to do, delivered personally to the other parties to this agreement on the first day of the month. Each monthly settlement of the partnership gains and losses between the parties hereto, their heirs, executors, administrators and assigns, shall constitute an accord and satisfaction of all claims against said co-partnership which each party hereto has against the other on account of said co-partnership, and a full accounting to such date. The last monthly settlement shall constitute an accord and satisfaction, a release and discharge to

that date of all claims which each member of this co-partnership has against the other.

Thirteenth: It is also agreed that at the end or sooner termination of this co-partnership each co-partner shall and will make a just, true and final account of all things relating to said business and that all things will be adjusted and all gains and increases thereof shall appear to be remaining either in money, goods, wares or merchandise, debts or otherwise shall be divided between them, and all outstanding book accounts shall be collected at the end of the said co-partnership by them, and that all proceeds realized [fol. 50] from the collection thereof, less the actual expenses incident to the collection thereof, shall be divided between them, and all outstanding book accounts shall be collected at the end of the said co-partnership by them, and that all proceeds realized from the collection thereof, less the actual expense incident to the collection thereof, shall be divided between the members of the co-partnership as follows:

William L. Wallace, twenty-six seventy-seconds (26/72) part of all profits and losses incident to said co-partnership; Herbert O. Brust, fifteen seventy-seconds (15/72) part of all profits and losses incident to said co-partnership; Carl E. Muench, eleven seventy-seconds (11/72) part of all profits and losses incident to said co-partnership; and Carlton F. Potter, twenty seventy-seconds (20/72) part of all profits and losses incident to said co-partnership.

Fourteenth: This agreement is binding upon the heirs, executors, administrators and assigns of the parties hereto.

In Witness Whereof the said parties have hereunto set their hands and seals this 1st day of July, 1933.

William L. Wallace, L. S. Herbert O. Brust, L. S.
Carl E. Muench, L. S. Carlton F. Potter, L. S.

EXHIBIT "2"

Articles of Agreement made and entered into this 1st day of July, 1935, by and between William L. Wallace, Herbert O. Brust, Carl E. Muench, Carlton F. Potter and Alvin J. [fol. 51] Spire, severally of the City of Syracuse, Onondaga County, New York, Witnesseth:

First: In consideration of the mutual promises and agreements herein contained the said parties above named have agreed to become co-partners in the practice of medicine under the firm name and style of "Wallace, Brust, Muench, Potter & Spire", and by these presents do become co-partners in the practice of medicine in the City of Syracuse and elsewhere, under the firm name and style of "Wallace, Brust, Muench, Potter & Spire."

Second: That said co-partnership shall commence on July 1st, 1935, and end on June 30, 1936.

Third: To the end and purpose of this agreement each party agrees to give his whole time and attention to the affairs of said co-partnership, and to perform in the discharge of his duties such work as may be properly assigned to him.

Fourth: It is understood and agreed that any and all moneys hereafter received on account of the previous agreement dated July 1, 1933 on account of a co-partnership between William L. Wallace, Herbert O. Brust, Carl E. Muench and Carlton F. Potter, after the payment of all debts, liabilities and charges to July 1, 1935, on account of the aforesaid partnership agreement shall belong exclusively to William L. Wallace, Herbert O. Brust, Carl E. Muench and Carlton F. Potter and shall be divided on the following ratio:

William L. Wallace	26/72nds
Herbert O. Brust	15/72nds
Carl E. Muench	11/72nds
Carlton F. Potter	20/72nds

[fol. 52] Fifth: That during the continuance of this agreement William L. Wallace, Herbert O. Brust, Carl E. Muench, Carlton F. Potter and Alvin J. Spire agree to devote their time and attention and best endeavors to the utmost of their skill and power for the interest, benefit and profit as herein provided. That the entire professional receipts during said term paid to and received by William L. Wallace, Herbert O. Brust, Carl E. Muench, Carlton F. Potter and Alvin J. Spire shall be paid into a common fund and from said fund there shall be paid the following:

(1) All professional business expenses of each of said parties as herein defined.

(2) Joint expenses of said Wallace, Brust, Muench, Potter & Spire, if any.

(3) To Herbert O. Brust a sum sufficient which when added to the amount received from Wallace, Brust, Muench & Potter under the Fourth paragraph above will equal a total amount of \$100.00 a week.

(4) After making the payments and deductions aforesaid the balance remaining from said gross income shall be divided into one hundred equal parts and shall be monthly set aside and paid over to the following named persons and in the following proportions:

William L. Wallace, forty one-hundredths (40/100) part of all profits and losses incident to said co-partnership;

Carl E. Muench, fifteen one-hundredths (15/100) part of all profits and losses incident to said co-partnership;

Carlton F. Potter, thirty one-hundredths (30/100) part of all profits and losses incident to said co-partnership;

Alvin J. Spire, fifteen one-hundredths (15/100) part of all profits and losses incident to said co-partnership.

[fol. 53] Sixth: It is understood and agreed that there shall be had and kept at all times during the continuance of this co-partnership, perfect, just and true books of account wherein each of said co-partners shall enter and set down all moneys by them or either of them received, paid out and expended in and about said business, and also all goods, wares and commodities and merchandise by them or either of them bought or sold on account of said co-partnership business whatsoever. Said books shall be used in common between the said co-partners and each may have access thereto without interruption or hindrance of the other.

Seventh: All moneys received during the term of this co-partnership agreement shall be deposited in the Merchants National Bank and Trust Company under the firm name of "Wallace, Brust, Muench, Potter & Spire", and each party of said firm shall be allowed to draw checks upon said funds.

Eighth: That on the first day of each month hereafter, until and including July 1, 1936, there shall be an accounting for the preceding month of all of the partnership gains and losses, and there shall be paid to each of said partners, after

the deduction of the expenses of said co-partnership, the proportionate share of the profits of said co-partnership as hereinbefore specified.

Ninth: It is understood and agreed that nothing herein contained shall in any way prevent any or either of the parties hereto from carrying health and accident insurance, for their own individual benefit, but at their own cost and expense.

Tenth: It is also agreed that each man at his own cost will maintain his own separate automobile or automobiles as he may see fit or his work requires, and pay the expenses incident to the maintenance of the same, except such partner hereto may charge said co-partnership with the expense [fol. 54] for all necessary out-of-town business trips taken in the interest of said co-partnership, at the rate of six cents per mile for all business trips taken by automobile. Each man shall maintain in his own home or residence, at his own expense, a telephone.

Eleventh: It is agreed that the members of said co-partnership shall not make or endorse any note, or procure money upon the written promise of said co-partnership, or discount any notes or other obligations of said co-partnership, but nothing herein is intended to limit or abridge the right of each member of said co-partnership to sign checks for the withdrawal of money and to endorse for deposit checks, notes or other evidences of debt in the conduct of said partnership.

Twelfth: Any one of the parties to this contract may terminate this co-partnership agreement upon thirty (30) days' written notice of his intention so to do, delivered personally to the other parties to this agreement on the first day of the month. Each monthly settlement of the partnership gains and losses between the parties hereto, their heirs, executors, administrators and assigns, shall constitute an accord and satisfaction of all claims against said co-partnership which each party hereto has against the other on account of said co-partnership, and a full accounting to such date. The last monthly settlement shall constitute an accord and satisfaction, a release and discharge to that date of all claims which each member of this co-partnership has against the other.

Thirteenth: It is also agreed that at the end or sooner termination of this co-partnership each co-partner shall and will make a just, true and final account of all things relating to said business and that all things will be adjusted and all gains and increases thereof shall appear to be remaining either in money, goods, wares or merchandise, [fol. 55] debts or otherwise shall be divided between them, and all outstanding book accounts shall be collected at the end of the said co-partnership by them, and that all proceeds realized from the collection thereof, less the actual expenses incident to the collection thereof, shall be divided between them, and all outstanding book accounts shall be collected at the end of the said co-partnership by them, and that all proceeds realized from the collection thereof, less the actual expense incident to the collection thereof, shall be divided between the members of the co-partnership as follows:

William L. Wallace, forty one-hundredths ($40/100$) part of all profits and losses incident to said co-partnership;

Carl E. Muench, fifteen one-hundredths ($15/100$) part of all profits and losses incident to said co-partnership;

Carlton F. Potter, thirty one-hundredths ($30/100$) part of all profits and losses incident to said co-partnership;

Alvin J. Spire, fifteen one-hundredths ($15/100$) part of all profits and losses incident to said co-partnership.

Fourteenth: This agreement is binding upon the heirs, executors, administrators and assigns of the parties hereto.

In Witness Whereof, the said parties have hereunto set their hands and seals this — day of July, 1935.

William L. Wallace, L.S.; Herbert O. Brust, L.S.;

Carl E. Muench, L.S.; Carlton F. Potter, L.S.;

A. J. Spire, L.S.

(Acknowledged July 24, 1935)

[fol. 56]

EXHIBIT "3"

Know All Men by These Presents, That Frank C. Wallace and Norman J. Pfaff, as executors of the estate of William L. Wallace, deceased, parties of the first part, in consideration of the payment to them as such executors of the sum of five hundred dollars (\$500.00) by Frederic A. Lyman,

of Syracuse, New York, party of the second part, the receipt whereof is hereby acknowledged, have sold and by these presents do grant, assign and convey unto the said Frederic A. Lyman, a one-fifth interest of William L. Wallace, deceased, in the accounts receivable of a certain partnership known as Wallace, Brust, Muench, Potter & Spires remaining due and unpaid, as set forth in Exhibit "A" hereto annexed and made a part hereof.

To Have and to Hold the same unto the said Frederic A. Lyman, his heirs, executors, administrators and assigns forever, to and for the use of the said Frederic A. Lyman, hereby constituting and appointing the said Frederic A. Lyman their true and lawful attorney, irrevocably in their name, place and stead for the purpose aforesaid, to ask, demand, sue for, attach, levy, recover and receive all such sum and sums of money which now are or may hereafter become due, owing and payable for or on account of all and any of the accounts, dues, debts and demands above assigned, giving and granting unto the said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary as fully to all intents and purposes as they might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that the said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

[fol. 57] The aforesaid assignment and transfer being made in furtherance of a public sale of the subject of this assignment held pursuant to a decree of the Surrogate's Court of the County of Onondaga dated September 16, 1936, which sale was held on October 2, 1936, at eleven o'clock in the forenoon of that day, at 930 University Building, Syracuse, New York, and the aforesaid assignee having been the highest bidder at said sale.

In Witness Whereof the parties of the first part have hereunto set their hands and seals this 16th day of October, 1936.

Frank B. Wallace, Norman J. Pfaff, Executors of the
Estate of William L. Wallace, Deceased.

(Acknowledged Oct. 16, 1936.)

EXHIBIT "A4"

Schedule F

1. Interest in partnerships, con'td.:

Deceased had an interest in the partnership of Wallace, Brust, Muench & Potter, which partnership existed until July 1, 1935, in which deceased's share in the partnership accounts was 26/72.

Deceased also had an interest in the partnership of Wallace, Brust, Muench, Potter & Spires, which partnership existed from July 1, 1935, to Dec. 25, 1935, in which deceased's share in the partnership accounts was 40/100.

[fol. 58] The net earnings of said partnerships for the five years preceding date of death are as follows:

1931	1932	1933	1934	1935
\$69,455.10	\$49,881.13	\$49,317.94	\$51,100.00	\$53,524.40

These partnerships were formed by physicians associated with Crouse-Irving Hospital, Syracuse, N. Y., and the only asset of any value in said partnerships were the accounts receivable in which deceased's share was as explained above.

The value of deceased's share as of the date of his death in these accounts is accurately determined by the amount of payments which have been made to the Executors on the same from the date of death to Oct. 1, 1936, namely—\$6,193.14, at which time the remaining accounts were sold by the Executors under an order of the Surrogate's Court of Onondaga County to Frederic A. Lyman for the sum of \$500.00, making the total value of these assets \$6,693.14.

BEFORE UNITED STATES BOARD OF TAX APPEALS

STIPULATION AS TO PRINTED RECORD

It is hereby stipulated that the Clerk may omit from the printed record the Table of Contents and the colloquy of counsel contained in pages 1 through 9, and the last 13 lines on page 46, and page 47 of the Transcript of Minutes, and also the Schedule of Accounts annexed to Exhibit 3.

Laurence Sovik, Attorney for Petitioner. Samuel O. Clark, Jr., Attorney for Respondent.

April 16th, 1940.

[fol. 59] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 60] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE SECOND CIRCUIT, OCTOBER TERM, 1939

No. 337

(Argued June 12, 1940. Decided July 8, 1940)

NORMAN J. PFAFF and FRANK B. WALLACE, Executors of
Estate of William L. Wallace, Deceased, Appellants,

VS.

COMMISSIONER OF INTERNAL REVENUE, Appellee

On Petition for Review from the United States Board of
Tax Appeals

Before Swan, Augustus N. Hand and Patterson, Circuit
Judges

Laurence Sovik, Attorney for Appellants; Costello,
Cooney & Fearon, of Counsel.

Samuel O. Clark, Jr., Assistant Attorney General; Sewall,
Key and Morton K. Rothschild, Special Assistants to the
Attorney General, for Appellee.

OPINION

PER CURIAM:

Decision affirmed.

[fol. 61] IN UNITED STATES CIRCUIT COURT OF APPEALS, SEC-
OND CIRCUIT

NORMAN J. PFAFF and FRANK B. WALLACE, as Executors,
etc., Petitioners,

V.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appeal from the United States Board of Tax Appeals

JUDGMENT—Filed July 24, 1940

This cause came on to be heard on the transcript of rec-
ord from the United States Board of Tax Appeals, and was
argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said Board in accordance with this decree.

D. E. Roberts, Clerk.

[fol. 62] [File endorsement omitted.]

[fol. 63] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 64] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 12, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is assigned for argument immediately following No. 436.

And it is further ordered that the duly-certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: File No. 44,828. U. S. Circuit Court of Appeals, Second Circuit. Term No. 479. Norman J. Pfaff and Frank B. Wallace, Executors of the Estate of William L. Wallace, Deceased, Petitioners, vs. Commissioner of Internal Revenue. Petition for a writ of certiorari and exhibit thereto. Filed October 1, 1940. Term No. 479, O. T., 1940.

(1402)